

COTTONWOOD HEIGHTS

RESOLUTION NO. 2012-18

A RESOLUTION APPROVING ENTRY INTO AN INTERLOCAL AGREEMENT WITH CANYONS SCHOOL DISTRICT FOR THE BUTLER MIDDLE SCHOOL AUDITORIUM

WHEREAS, the Interlocal Cooperation Act, UTAH CODE ANN. §11-13-101 *et. seq.* (the “*Interlocal Cooperation Act*”), provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, the Board of Education of the Canyons School District (“*District*”) and the city of Cottonwood Heights (“*City*”) are public agencies for purposes of the Interlocal Cooperation Act; and

WHEREAS, a new building to house District’s Butler Middle School (the “*New Building*”) currently is under construction; and

WHEREAS, District’s original plans for the New Building included an auditorium (the “*Auditorium*”) with approximately 750 fixed seats. To provide a venue of increased size for City-sponsored events such as plays, performances, meetings, debates and the like, City has requested District to increase the capacity of the Auditorium to 1,000 fixed seats, conditioned on City’s agreement to pay the increased costs attributable to such enhancement; and

WHEREAS, consequently, City has prepared and submitted for District’s review an “Interlocal Cooperative Agreement (Butler Middle School)” containing the terms and conditions for increasing the capacity of the Auditorium at City’s cost (the “*Agreement*”); and

WHEREAS, City’s municipal council (the “*Council*”) met in regular session on 24 April 2012 to consider, among other things, approving City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement with District be, and hereby is, approved, and that City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of City following such amendments and modifications to the Agreement as City’s mayor, in consultation with City’s manager and attorney, may deem necessary or advisable.

This Resolution, assigned no. 2012-18, shall take effect immediately upon passage.

PASSED AND APPROVED this 24th day of April 2012.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

By Kelvyn H. Cullimore, Jr.
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 24th day of April 2012.

RECORDED this 25 day of April 2012.

Interlocal Cooperative Agreement

(New Butler Middle School)

THIS INTERLOCAL COOPERATIVE AGREEMENT (this "*Agreement*") is maeeffective ____ 2012 by the city of **COTTONWOOD HEIGHTS**, a municipal corporation of the state of Utah ("*City*"), and **THE BOARD OF EDUCATION OF THE CANYONS SCHOOL DISTRICT**, a school district of the state of Utah ("*District*"). City and District are each referred to herein as a "*Party*" and are collectively referred to herein as the "*Parties*."

RECITALS:

A. District owns certain improved real property (the "*District Property*") that heretofore has been used as the Butler Middle School and the Cottonwood Height Elementary School ("*CH Elementary*").

B. A new building to house Butler Middle School (the "*New Building*") currently is under construction on a portion of the District Property that is located between the site of the current building housing Butler Middle School (the "*Old Building*") and CH Elementary. In connection with completion of the New Building, the Old Building and CH Elementary will be razed and the playing fields, parking areas and associated improvements will be reconfigured.

C. District's original plans for the New Building included an auditorium (the "*Auditorium*") with approximately ____ seats. To provide a venue of increased size for City-sponsored events such as plays, performances, meetings, debates and the like, City has requested District to increase the capacity of the Auditorium to 1,000 fixed seats, conditioned on City's agreement to pay the increased costs attributable to such enhancement.

D. The Interlocal Cooperation Act (UTAH CODE ANN. § 11-13-101, *et seq.*) (the "*Interlocal Cooperation Act*") provides, among other things, that any two or more public agencies may enter into an agreement with one another for joint or cooperative actions to do what each agency is authorized by law to perform.

E. The Parties desire to enter into an "interlocal cooperative agreement" whereunder they would cooperate with one another concerning the matters specified in this Agreement.

F. The Parties are "public agencies" for purposes of the Interlocal Cooperation Act, are empowered to enter into this Agreement, and have determined that it is mutually advantageous to enter into this Agreement.

G. This Agreement shall entirely supersede any and all prior negotiations and agreements, oral and/or written, between the Parties regarding the matters addressed by this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and in compliance with and pursuant to the terms hereof and the provisions of the Interlocal Cooperation Act, the Parties hereby agree as follows:

Section 1. **Auditorium**. City shall reimburse District for the additional cost of increasing the capacity of the Auditorium to 1,000 fixed seats, on the following terms and conditions:

(a) **Modifications to Auditorium, Etc.** By 31 December 2013, District shall cause the Auditorium to be constructed in a manner that includes (i) at least 1,000 fixed seats, and (ii) dedicated, secure space in the stage area of the Auditorium for permanent storage of City's props, costumes and related goods and equipment. The plans and specifications for the Auditorium shall be mutually agreeable to both Parties, who shall cooperatively work together to prepare and approve such plans in a reasonably, timely fashion.

(b) **City's Contribution**. City shall pay to District the actual cost (the "Contribution") of the modifications to the Auditorium specified in section 2(a), above (the "Modifications"), up to a cumulative maximum of \$1,000,000.00, as follows:

(i) **Substantiation**. City's obligation to pay the Contribution to District shall be conditioned on District first providing to City such evidence as City reasonably may require to substantiate the actual cost of the Modifications incurred by District.

(ii) **Payment Schedule**. City shall pay the Contribution to District within ten business days after completion of construction and issuance of a certificate of occupancy (collectively, "Completion") for the New Building, which currently is anticipated to occur by 31 December 2013.

(c) **Use of Auditorium**. In return for payment of the Contribution, City shall be entitled to use of the Auditorium as follows:

(i) **Relative Priorities of Use**. From each June 10 through August 20, City shall have first priority for use of the Auditorium, and District shall have second priority for its use. During the balance of the year, such priorities shall be reversed; provided, however, that City also shall have first priority use of the Auditorium once each month between August 21st and June 9th if such City usage will occur on a Saturday or after 6:00 p.m. Each Party shall cooperate with the other regarding scheduling of events in the Auditorium to the greatest extent reasonably possible to enable both Parties to use the Auditorium for their purposes.

(ii) **Janitorial Fees, Etc.** In connection with its actual use of the Auditorium, City promptly shall reimburse District for the actual cost incurred by District for any increased janitorial, electrical, IT, security, etc. services arising from City's use of the Auditorium. Such rates shall be discussed and agreed upon by the Parties in advance, at least annually.

(iii) **Advertising/Publicity**. City shall have the right to reasonable co-use of any on-site marquee or electronic signage to publicize any upcoming City event in the Auditorium.

(iv) **Parking**. Attendees of City events in the Auditorium shall be entitled to use parking areas located on the District Property, free of charge. City and its invitees

shall be beneficiaries of any cross-parking rights with adjacent properties owned by other governmental entities.

(v) Event Flags. City may, at its cost and liability, display flags and banners on the outside of the Auditorium in connection with City's Butlerville Days community event on or about July 24th of each year; provided, however, that no damage to the New Building shall result from such display.

(d) Insurance.

(i) Liability Insurance. Throughout the term of this Agreement, each Party shall, at its cost, maintain in full force and effect for the mutual benefit of City and District, a comprehensive commercial general liability insurance policy or policies (herein collectively referred to as a "*Liability Policy*") against premises liability or other claims for damage or injury to persons or property arising from such party's use or occupancy of the Auditorium and related parking lots and improvements associated with the New Building. Each Liability Policy shall be maintained on the minimum basis of \$2,000,000.00 combined single limit for bodily injury and property damage. The insurance coverage to be afforded by a Liability Policy may, at the providing Party's option, be provided under a "blanket" liability policy covering such Party or more of such Party's other locations.

(ii) Form of Liability Policy. Each Liability Policy shall be with the Utah Local Governments Trust, _____ or other companies reasonably selected by the providing Party, and on forms and with loss payable clauses reasonably satisfactory to the other Party (the "*Other Party*"), naming the Other Party and any others reasonably designated by the Other Party as additional insureds. Such policy shall be written as a primary policy, not contributing with and not in excess of coverage which the Other Party may carry. No such policy shall be cancelable (or coverage reduced) except after twenty (20) days written notice to the Other Party. A copy of a Liability Policy or a certificate evidencing the existence and amounts of such insurance shall be delivered to the Other Party within fifteen (15) days after the Other Party's request.

(iii) Casualty Insurance. Throughout the Lease Term, District shall maintain in effect a policy or policies (hereinafter collectively referred to as the "*Casualty Policy*") of fire and extended coverage casualty insurance on the New Building and its associated improvements in the amount of their full replacement cost. The Casualty Policy shall be with such licensed insurer as District reasonably may select, on forms and with loss payable clauses reasonably satisfactory to City. District shall pay all costs associated with the Casualty Policy. The proceeds of the Casualty Policy shall be used by District to promptly rebuild the Auditorium to its prior condition in the event of a loss covered by the Casualty Policy.

(iv) Waiver of Subrogation. To the extent permitted under the subject policies of insurance, City and District each hereby waive any and all right of recovery against the other or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which may be in force at the time of such loss or damage.

Section 3. **Standards.** Each Party shall assure that it performs its obligations hereunder in full compliance with all applicable laws and standards of performance.

Section 4. **Costs.** Except as otherwise specified herein, each Party shall pay its own costs incurred to perform its obligations hereunder, including, without limitation, salaries and benefits to its personnel and all costs of equipment for such personnel.

Section 5. **Conflict Resolution.** In the event of a dispute between the Parties concerning this Agreement, the Parties agree (without limiting any and all other legal and equitable remedies) that a representative of City will meet as soon as practical with a representative of District to discuss and attempt to resolve the dispute. If the Parties do not agree, then the dispute shall be resolved pursuant to section 12 below.

Section 6. **Employment Status.**

(a) **Official Status.** Each Party shall have complete control and discretion over its personnel performing such Party's obligations under this Agreement, and the same shall at all times be and remain employees of such Party.

(b) **Salary, Wages and Benefits.** A Party shall not have any obligation or liability for the payment of any salaries, wages, pension, civil service, retirement or other benefits or compensation to the other Party's personnel performing such other Party's obligations under this Agreement.

Section 7. **Hold Harmless; Indemnity.**

(a) **Hold Harmless.** Neither Party shall not be liable for any injury to person or property incurred by the other Party or its invitees, licensees or the like in the Auditorium.

(b) **Indemnity.** The Parties are governmental entities under the "Governmental Immunity Act of Utah" (UTAH CODE ANN. § 63G-7-101, *et seq.*) (the "*Immunity Act*"). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each of the Parties is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. No Party waives any defenses otherwise available under the Immunity Act nor does any Party waive any limits of liability currently provided by the Immunity Act. Each Party shall defend, indemnify, save and hold harmless each of the other Parties (including its elected and appointed officers, employees and agents) from and against any and all demands, liabilities, claims, damages, actions, or proceedings, in law or equity, including reasonable attorney's fees and costs of suit, relating to or arising from the indemnitor's performance, or failure to perform, its duties under this Lease.

Subject to the foregoing or as otherwise provided in this Agreement, each Party shall indemnify and hold the other Party (including its elected and appointed officers, employees and agents) harmless from any and all claims, actions, or damages (including attorneys' fees and costs incurred in connection with the same) arising out of the indemnitor's use and occupancy of the Auditorium.

Section 8. **Term.** This Agreement shall be effective as of the date specified above, and, unless renewed or sooner terminated as provided for herein, shall terminate at midnight on 1 July 2062. Thereafter, this Agreement shall be deemed automatically renewed for successive 10-

year terms until such time as the Parties either mutually agree in writing to a longer term or this Agreement is terminated as provided in section 10 below.

Section 9. **Termination.** In the event of a Party's material default hereunder that results in litigation under section 12 below, the non-defaulting party may, *inter alia*, seek a court order terminating this Agreement.

Section 10. **Additional Interlocal Act Issues.**

(a) **No Separate Entity.** This Agreement does not create a separate legal/interlocal entity.

(b) **Joint Board.** As required by UTAH CODE ANN. §11-13-207, the parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of City's manager or designee and District's chief executive officer or designee. Any real or personal property used in the Parties' cooperative undertaking herein shall be acquired, held, and disposed of as determined by such joint board.

(c) **Financing Joint Cooperative Undertaking and Establishing Budget.** There is no financing of joint or cooperative undertaking and no budget shall be established or maintained.

Section 11. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within two (2) business days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties as set forth below.

City:	COTTONWOOD HEIGHTS Attn. Liane Stillman, City Manager 1265 East Fort Union Blvd., Suite 250 Cottonwood Heights, UT 84047
With a copy to:	Wm. Shane Topham CALLISTER NEBEKER & McCULLOUGH 10 East South Temple, 9 th Floor Salt Lake City, UT 84133
District:	CANYONS SCHOOL DISTRICT Attn. Keith Bradford, Business Administrator 9150 South 500 West Sandy, UT 84070
With a copy to:	Paul D. Van Komen BURBIDGE & WHITE 15 West South Temple, #950 Salt Lake City, UT 84101

Section 12. **Claims and Disputes.** Claims, disputes and other issues between the Parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, each of the Parties shall continue to perform its obligations hereunder during the pendency of such dispute.

Section 13. **Non-Funding.** Funds are not presently available for either Party's performance of this Agreement beyond the end of the Parties' current fiscal years, which is 31 December 2012 for District, and 30 June 2012 for City. Each Party's obligation for performance of this Agreement beyond the end of its current fiscal year is contingent upon funds being appropriated for any payments due under this Agreement. If no funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriations due to insufficient revenue, resulting in insufficient funds for any payments due or about to become due under this Agreement, then this Agreement shall create no obligation on such Party as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated or in the event of reduction in appropriation, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Each Party shall endeavor to notify the other Party as soon as possible when and if such financial circumstances may exist. Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payment, or other charges of any kind whatsoever to the parties and no right or action or damages or other relief shall accrue to the benefit of a Party against the other Party as to this Agreement, or any portion thereof, which may so terminate and become null and void.

Section 14. **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

Section 15. **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

Section 16. **Applicable Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

Section 17. **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings concerning the subject matter of this Agreement.

Section 18. **Time.** Time is the essence of this Agreement.

Section 19. **Survival.** All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and any closings contemplated by this Agreement, and shall continue in full force and effect throughout the term of this Agreement.

Section 20. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

Section 21. **Rights and Remedies.** The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provision(s) hereof.

Section 22. **Severability.** In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

Section 23. **Litigation Expenses.** If any action, suit or proceeding is brought by a party concerning this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

Section 24. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 25. **Approval by Attorneys.** This Agreement shall be submitted to the authorized attorneys for each of the Parties for approval in accordance with UTAH CODE ANN. §11-13-202.5.

Section 26. **Possible Future Amendment and Restatement.** If the City succeeds in obtaining material funding from one or more third parties to accomplish the purposes of this Agreement, the parties shall cooperate to amend and restate this Agreement in such manner as the City or such donor(s) reasonably may require.

[Signature page follows.]

DATED effective the date first-above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS

Linda W. Dunlavy, City Recorder
Date signed: _____

By: _____
Kelvyn H. Cullimore, Jr., Mayor
Date signed: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____
Wm. Shane Topham, City Attorney
Date Signed: _____

DISTRICT:

ATTEST:

**BOARD OF EDUCATION OF THE
CANYONS SCHOOL DISTRICT**

Keith Bradford, Business Administrator
Date signed: _____

By: _____
Tracy S. Cowdell, President
Date signed: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____
Paul D. Van Komen, Attorney for CSD
Date Signed: _____